

## **ARTICLE 27**

### **HEALTH AND SAFETY**

#### **PART A. GENERAL EXAMINATIONS**

##### **Section 1. Medical Verification.**

The Employer may not require any employee to submit to any medical, psychiatric or psychological examination, except as provided in Parts B and C of this Article and/or upon the following circumstances:

- a. The employee has been absent from work for more than four consecutive days because of claimed illness, or where the employee has utilized ten days of sick leave in any three month period. In such instances, the Department may only require the employee to provide a statement from his/her personal physician. In instances where the Employer reasonably believes that the sick leave is being abused the Employer may require a medical report from a physician at any time.
- b. Where the employee submits any claim for extended sick leave disability benefits, or workers' compensation. In said event, the Employer may rely upon the employee's personal physician's statement, or may require the employee to submit to a medical examination by a competent physician at the Department's expense.
- c. As a part of a Department-wide periodic medical review program directed at all enlisted personnel conducted at the Department's expense. The Employer may not single out any employee or groups of employees for medical examinations under this clause. If the Department determines to undertake such a program of medical examinations for all employees, it shall do so only after consultation and agreement with the Association with reference to the procedures of such a program, and the standards to be applied, the goals of the program and the physicians to be utilized.

##### **Section 2. Psychological Studies.**

The Department shall not require any employee to participate in any psychological research program or study upon employees in the unit without the express written consent of the Association.

All such research, programs or studies shall be conducted with the established professional standards of the psychological and psychiatric profession and their respective Code of Ethics.

All findings, proposals or changes in departmental policy from these projects shall be submitted to both the Association and all employees who participated in such projects prior to any departmental, professional or public publications.

No employee participating in any such research program shall be disciplined in any manner as a result of anything disclosed or observed about said employee as a result of participation in said study, nor shall the identity of any individual employee participating in said study be revealed, nor shall the fact of participation in said study or the results thereof be made a part of the employee's personnel file without the written consent of the employee.

**Section 3. Psychiatric/Psychological Examination.**

- a. No employee shall be required to undergo any psychiatric or psychological examination or be required to be subjected to psychological examination by psychologists retained/employed by the Department, except upon an assertion by the employee of disability for psychological reasons.
- b. The records and names of all employees who voluntarily choose to use the Department's psychological services shall remain strictly confidential, except as set forth in Subsection "c" below. No information gained from the employee through consultation with the psychologist retained by the Department, nor any diagnosis or prognosis or other formal or informal opinions and views, shall be provided to personnel in the Department by the departmentally-retained/employed psychologist, except upon the specific written consent of the employee. A complete copy of all information provided to the Department, upon such written consent, shall simultaneously be provided to the employee.
- c. The exception referred to above in Subsection "b" is where the Department-retained/employed psychologist believes it to be in the best interests of the Department and employee that the employee receive additional psychiatric and/or psychological assistance. In such situations, notice to the employee and the Human Resources Office of this recommendation may be made, limited to that recommendation. No additional information shall be provided to the Employer.
- d. It is the specific intent of this Section to encourage employees covered by the terms of this Agreement to freely and willingly utilize the services of the departmental psychologist to assist them in addressing personal and work-related stress situations. It is recognized that the objective of voluntarily obtaining assistance will be materially diminished and curtailed if such highly personal and subjective information is provided to the Employer. Though nothing herein is intended to prevent the Department psychologists from compiling statistical records, or making general reports with reference to the types of problems and the needs of departmental employees, as long as copies of said reports are simultaneously provided

to the Association. Said reports and recommendations shall in no way disclose the identity of the individual employees seeking treatment or consultation. It is recognized by both the Association and the Employer that violations of the provisions of this Section may result in liability to both the Employer and to the departmental psychologist and are also grievable.

- e. Nothing herein shall prevent the Employer and the Association from reaching any other and further agreement with reference to the utilization of psychological services for the benefit of employees of the Department or from reaching agreement in the utilization of psychological services as an adjunct and supportive tool in the rehabilitation of an employee after an employee has been found guilty in departmental disciplinary proceedings.
- f. The departmental psychologist may not be called as a witness in any departmental disciplinary proceedings or grievance meeting to testify regarding discussions between the psychologist and employee, except upon the specific written request of the employee.
- g. Nothing herein shall prevent the Employer, after consultation with the employee, from requiring an employee to undergo psychiatric or psychological or medical examination or treatment when there is a reasonable belief that such examination or assistance is necessary for the continued employment of the employee or to assist in determining if such continued employment is appropriate. The employee shall be given the opportunity of conferring with the Association representative, prior to said examination. However, such psychiatrist or psychologist or physician will be an "outsider," i.e., not Department-retained/employed personnel. All such costs shall be paid by the Employer, and any medical findings or recommendations therefrom shall be provided to the Employer. Abuse of this provision by the Employer shall be grievable.
- h. Except for instances wherein discipline is imposed, and psychiatric or psychological medical evaluation is involved in the implementation of the discipline, no information or reference concerning psychological or psychiatric medical treatment or referral required under this Article shall be made a part of the employee's personnel file, and in no event will such information be released or made public.

## **PART B. VISION SCREENING PROGRAM**

The Employer may implement the vision screening program established by Official Order #79, dated January 15, 1997 for all bargaining unit members who drive departmental vehicles, subject to the following provisions:

- a. The screening shall be conducted on departmental time at no expense to the employee. The cost of any subsequent professional eye care resulting from the identification of a vision problem shall be borne by the employee. Should a professional eye examination fail to support the existence of a vision problem identified in the screening program, the Employer will pay for such eye examination to the extent that it is not covered by vision insurance.
- b. The rights of an employee who fails the vision screening program under applicable provisions of state and federal handicapper laws shall not be diminished by these contract provisions.
- c. The Employer shall endeavor to accommodate an employee who fails the vision screening program to the extent that such accommodation is lawful, does not violate other provisions of this contract or Civil Service Rules, and that it does not involuntarily subject the employee to any of the following:
  - (1) A loss or reduction of wages;
  - (2) A loss or reduction of fringe benefits;
  - (3) A change in classification; or
  - (4) A change in work location.
- d. If the Employer is unable to accommodate an employee pursuant to the provisions of paragraph c., the employee and the Employer may exercise their rights under this Agreement, and in accordance with the provisions of Act No. 182 of the Public Acts of 1986, and Letter of Understanding #22 which took effect October 1, 1986. An employee who fails to meet the vision screening standards and who has less than ten years of credited service under the State Police Retirement Act (P.A. 182 of 1986) shall be treated by the Department of State Police as having 10.0 years of credited service for purposes of retirement. This provision shall not apply if the Department has accommodated such employee pursuant to this Part, or where there is direct evidence that the employee's failure to meet the vision screening standards arose out of a non-duty occurrence.

#### **PART C. DRUG AND ALCOHOL TESTING**

The parties recognize that drug and/or alcohol abuse by an employee often contributes to less than satisfactory attendance and job performance, and may needlessly endanger the safety and well being of other employees and members of the general public. The parties also recognize the unique need for members of this

bargaining unit as law enforcement officers to be in strict compliance with the law.

**Section 1. Employee Assistance Program.**

Employees who believe that they have developed an addiction to, dependence upon or problem with alcohol are encouraged to seek assistance. Entrance in to the Employee Assistance Program can occur by self-referral, recommendation or referral by Behavioral Science Section. No employee will be disciplined as a result of any request for assistance under this section, nor will any employee be disciplined as a result of any information disclosed by the employee during his/her efforts in the Employee Assistance Program. Requests for assistance shall be treated as confidential.

Rehabilitation itself is the responsibility of the employee. For employees enrolled in an approved treatment program, the Department shall approve the use of available leave credits (annual, sick, compensatory, deferred) to cover the treatment period.

Upon authorization to return to work, the employee will be returned to active duty status in their former position.

**Section 2. Association Representation.**

The employee shall be advised of their right to Association consultation prior to a reasonable suspicion drug and/or alcohol test. This right shall not impede the timely testing of an employee who is required to be tested. The employee being tested may be given the opportunity to explain his/her behavior/action/appearance. The employee's explanation, if provided, shall be documented.

An employee shall also have the right to Association consultation prior to post incident testing, so long as the test is not delayed more than two hours from the time of the incident giving rise to the testing.

**Section 3. Testing.**

- a. The Employer may require an employee to submit to urinalysis drug screening and/or breath alcohol testing (BAT) under the circumstances set forth below in subsections b through h. All tests shall be conducted in a manner that reasonably protects employee confidentiality.

A bargaining unit employee shall not make the decision to test an employee under Part C of this Article.

Refusal to comply with an order to submit to urinalysis drug screening and/or breath alcohol testing given pursuant to the provisions of this Article shall constitute a basis for disciplinary action, up to and including discharge.

- b. **Random Testing:** An employee may be selected at random from a pool comprised of all employees covered by this Agreement. No more than

15% of the number of employees in the pool may be randomly tested by urinalysis drug screening and breath alcohol test each calendar year.

- c. **Reasonable Suspicion Testing:** While on duty, an employee may be required to submit to urinalysis drug screening and/or breath alcohol testing based on reasonable suspicion. Reasonable suspicion is defined to mean objective, articulated and specific facts which would support a reasonable individualized suspicion that the employee is using or may have used drugs or alcohol in violation of this Agreement or a departmental work rule. By way of example only, reasonable suspicion may be based upon any of the following:
- (i) Observable behavior or evidence of drug or alcohol use or the physical symptoms or appearance of being impaired, or under the influence of, a drug or alcohol.
  - (ii) A report of on-duty or sufficiently recent off-duty drug or alcohol use provided by a credible source.
  - (iii) Evidence that an individual has tampered with a drug test or alcohol test during employment with the State of Michigan.
  - (iv) Evidence that an employee is involved in the use, unauthorized possession, sale, solicitation, or delivery of drugs, or unauthorized possession and/or use of alcohol while on duty, while on the Employer's premises, or while operating an official vehicle (or approved use of a personal vehicle), machinery, or equipment.

The basis of support for the reasonable suspicion drug screening and/or breath alcohol test will be documented by a supervisor trained in reasonable suspicion drug/alcohol testing criteria and approved by the employer designated drug and alcohol testing coordinator (DATC) or his/her designee. An employee shall be required to submit to a reasonable suspicion drug screening and/or breath alcohol test; the objective facts and/or information must be articulated and may include the person's appearance and behavior. The written documentation shall contain information that supports reasonable suspicion testing. At the conclusion of the employee's duty status, a copy of the documentation shall be given to the employee.

This supervisory alcohol documentation shall only be maintained in a confidential sealed file in the Human Resources Division. When completed, this documentation shall be forwarded to the State Police Human Resources Director via first class mail marked personal and confidential. The employee's sealed file shall be destroyed if no further alcohol related event occurs within two years. This section does not

preclude the Employer or employee access to the documentation for grievance, arbitration, legal hearings, or to administer this Article. No other copies of this documentation shall be made without the prior approval of the employee.

Employees who consume alcohol while on approved assigned duties are exempt from this alcohol testing. This does not prohibit the testing of employees who report to work where evidence of alcohol consumption is apparent.

Any urinalysis drug screening test which is confirmed "positive" by Gas Chromatography/Mass Spectrometry (GC/MS) or a superior testing technique, along with specific facts and reasonable inferences drawn from those facts to establish reasonable suspicion that an employee did use, sell, solicit, dispense or possess any controlled substance unlawfully, shall constitute a basis for disciplinary action, up to and including discharge.

The parties recognize that controlled substance abuse may be the result of prolonged use of lawfully obtained controlled substances – singularly or in conjunction with other lawfully obtained controlled or uncontrolled substances. When controlled substance abuse appears to be the direct result of such lawful acquisition and use, treatment for the first instance that comes to the Department's attention (as opposed to disciplinary action) shall be pursued where there is no evidence of unlawful conduct.

d. **First Alcohol Related Event.**

Employees who report for duty and are suspected of having consumed alcohol shall be required to take a PBT. Employees whose PBT for a first alcohol related event is .02 or above may be subject to discipline. A test will not be considered positive unless it is .02 or above.

An employee who tests at .02 or above for alcohol use shall be relieved from duty and allowed to use available leave credits for the remainder of their shift.

Employees shall be required to complete an alcohol assessment and any recommended treatment program. Failure to complete the assessment and recommended treatment program shall also subject the employee to discipline.

e. **Second Or Subsequent Alcohol Related Event.**

Should an employee have a second or subsequent alcohol related event within two years of the first alcohol related event, the Employer has the sole discretion to direct an employee to be assessed. The employee may be subject to disciplinary action for second or subsequent alcohol related events in accordance with this Agreement. An employee who has a second

alcohol related event more than two years from the imposition of discipline shall have such event treated as a first event.

- f. **Post Incident Testing:** If requested, an employee shall submit to a drug and/or breath alcohol test if there is evidence that the employee may have caused or contributed to a serious work related accident or incident. A serious work accident/incident is defined as a duty related accident/incident resulting in death, or serious personal injury requiring immediate medical treatment by licensed medical personnel that arises out of any of the following:
  - (i). The operation of a motor vehicle
  - (ii). The discharge of a firearm
  - (iii). A physical confrontation
  - (iv). The handling of dangerous or hazardous materials
- g. **Access To A Controlled Substance:** An employee may be required to submit to urinalysis drug screening prior to, and preceding assignment from, any position in which an employee, due to the nature of his/her work assignment, routinely works with or has continuous access to any controlled substance(s).
- h. **Follow-Up Testing:** An employee shall submit to unscheduled follow-up drug and/or breath alcohol testing if, within the previous 24-month period, the employee entered into or completed a rehabilitation program for drug or alcohol abuse, failed or refused a pre-appointment drug test, or was disciplined for violating the provisions of this article and/or Employer work rules.

The Employer may require an employee who is subject to follow-up testing to submit to no more than six unscheduled drug or alcohol tests within any twelve-month period.

#### **Section 4. Drug and Alcohol Testing Protocol and Definitions.**

The parties hereby adopt the U.S. Department of Health and Human Services Mandatory Guidelines for Federal Workplace Drug Testing Programs dated June 9, 1994 as may be amended as the protocol and definitions for drug testing and the U.S. Department of Transportation Procedures for Transportation Workplace Drug and Alcohol Testing Programs for alcohol testing dated February 15, 1994 as may be amended for the alcohol testing protocol and definitions.

After adoption of the protocol, and its implementation, the protocol shall not be subject to change except by mutual agreement of the parties.



**Section 5. Review Committee for Drug and Alcohol Testing.**

A committee consisting of up to three representatives of the Association and up to three representatives of the Employer will meet, upon request of either party, to review testing data and discuss problems related to the administration of the testing program. The committee's recommendations, if any, will be submitted to the Employer for its consideration.

**Section 6. Required Treatment.**

In the event of a positive drug and/or alcohol test, and in the further event that a sanction less than discharge is imposed, the employee shall be referred to a substance abuse professional for assessment and, if necessary, treatment.

**Section 7. Grievance Procedure.**

All actions made pursuant to alcohol testing shall be subject to a "just cause" standard, and to the parties' grievance and arbitration procedure.

**Section 8. Association Held Harmless.**

The Employer agrees to hold the Association and its members harmless from any lawsuit claiming that the Employer violated any laws, regulations or worker's rights in the implementation or administration of this drug testing program. This provision is not intended to supercede any state or federal law. This provision excludes any claims that an employee may bring relating to the Association's duties or obligation owed to its members.

**PART D. PHYSICAL FITNESS TESTING**

**Section 1. Mandatory Standard.**

In an effort to promote general health and physical fitness, the Department may impose a mandatory fitness standard for bargaining unit members, subject to the limitations set forth herein. In no case shall the Department's fitness requirement exceed the standard contained in Appendix F of this Agreement. The standard shall not include age or gender grading, or any special consideration based on illegal criteria. An employee cannot be required to participate more than once per calendar year. The standard shall not be changed during the life of the agreement, except by mutual agreement of the parties.

**Section 2. Exemptions.**

An employee shall be exempt from the mandatory fitness test if:

- (a) The employee provides the employer with a current physician's statement (within the last six months) documenting medical reasons why the employee cannot participate.

- (b) The employee is excused for other documented reasons acceptable to the employer.
- (c) The employee participates in the voluntary program.

**Section 3. Duty Status.**

All physical fitness tests taken under this article, including the voluntary tests under Section 8, shall be taken while the employee is on duty. In addition, for any injuries directly related to (including preparation for) any department physical fitness test, an employee shall be considered on duty for purposes of Workers' Compensation, recrediting of sick leave, limited duty assignments, or any other benefit available for work related injuries. Nothing contained herein obligates the employer to compensate employees for time spent in preparation for the physical fitness test(s).

**Section 4. Accrued/Banked Hours.**

Employees who achieve the points required in the mandatory program shall be credited with two hours of sick time to be deposited in the sick leave bank established in Article 31, Part B. In addition, employees who participate in the voluntary fitness program under Part D, Section 8 of this Article shall be credited with two hours for participation, four hours for achieving the bronze standard, eight hours for achieving the silver standard, and 12 hours for achieving the gold standard. These hours will also be deposited in the Sick Leave Bank established in Article 31, Part B.

**Section 5. Failure to Meet Mandatory Fitness Standard.**

Employees who cannot meet the mandatory fitness standard as a result of a "disability" (as defined by the Michigan Civil Rights Act or by the Americans with Disabilities Act) may seek accommodation under appropriate state or federal law. The department may use the counseling and retraining portions of the Affirmative Assistance procedures established in Article 8, Part B to improve the performance of employees who cannot meet the physical fitness standard.

**Section 6. Disability Retirement.**

If an employee cannot meet the fitness standard as a result of a "disability", the employer may exercise its right to apply for a disability retirement under this agreement, and in accordance with the provisions of Act Number 182 of the Public Acts of 1986, and Letter of Understanding #22, which took effect October 1, 1986. An employee who fails to meet the fitness standard as a result of a "disability" and who has less than ten years of credited service under the State Police Retirement Act (P.A. 182 of 1986) shall be treated as having 10.0 years of credited service for purposes of retirement. This provision shall not apply if the Department has accommodated the employee, or where there is direct evidence that the employee's inability to meet the fitness standard arose out of a non-duty occurrence.

**Section 7. Fitness as Selection Criteria.**

Physical fitness shall not be used as a criteria for selection to any department position, with the following exceptions:

- (a) By mutual agreement
- (b) The Emergency Support Team
- (c) The standard currently in use for:
  - 1. Underwater Recovery Unit
  - 2. Canine Unit
  - 3. Bomb Squad.

**Section 8. Voluntary Physical Fitness Program.**

Nothing contained herein shall be construed to prevent the department from maintaining a voluntary physical fitness program to supplement the mandatory test. There shall be no job action taken for refusal to participate or demonstrate a level of proficiency in the voluntary program.

**Section 9. Enforceability.**

It is the intent of the parties to administer the physical fitness program in compliance with applicable state and federal laws. Consistent with Article 38 of this agreement, if any provision contained herein is subsequently found to be in violation of state or federal law, that provision shall not be enforced, but the remainder of the program shall not be affected.

**Section 10. Labor-Management Committee.**

The parties may each appoint three representatives to a joint labor-management committee with oversight responsibility for the continuing administration of the fitness program. Committee members shall be compensated in the same manner as Discipline Panel and Discipline Appeal Board members, as outlined in paragraph 2 of Appendix A.

The existence of a joint labor-management committee shall in no way diminish or abridge the right of the Association to address perceived violations of the contract through the grievance procedure established in Article 9 of this Collective Bargaining Agreement.